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99TH CONGRESS
2d Session

SENATE

REPORT
99-478

CONSENTING TO AN AMENDMENT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN HOMES COMMISSION ACT, 1920

SEPTEMBER 23 (legislative day, SEPTEMBER 15), 1986.—Ordered to be printed

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Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.J. Res. 17]

The Committee on Energy and Natural Resources to which was referred the joint resolution (H.J. Res. 17) to consent to an amendment enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

PURPOSE

The purpose of H.J. Res. 17 is to provide congressional consent to amendments to the Hawaiian Homes Commission Act of 1920 which was passed by the Hawaii State Legislature. The Hawaii Admission Act transferred authority over the Hawaiian Homes Commission Act to the State of Hawaii, and at the same time required Congressional consent to certain amendments to the Act proposed by the State.

BACKGROUND

The Hawaiian Homes Commission Act (HHCA) was passed by the U.S. Congress on July 9, 1921, with the purpose of "rehabilitating" Native Hawaiians by returning them to their lands through a federally sponsored homesteading program. Approximately 200,000 acres were set aside as leasable land under the Act which provides that Native Hawaiians, descendants of not less than one-half part blood of inhabitants of the Hawaiian Islands prior to 1778, are eli-

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gible to lease Hawaiian home lands for up to 99 years. Nominal rents of $1 per year allow Native Hawaiians to return to the land to regain an ancestoral way of life or gain economic and social benefits through farming, ranching or affordable housing.

This program was administered by the Federal Government until Hawaii was admitted into the Union on March 18, 1959, under the Hawaii Admission Act. At that time, Congress required that the HHCA become a provision of the State constitution and transferred the management and disposition of the Hawaiian home lands to the State of Hawaii. The U.S. Government retained a continuing responsibility to assist Native Hawaiians in achieving the goals of the HHCA. For example, section 4 of the Hawaii Admission Act states that "any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in a manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States."

In 1982, the State of Hawaii enacted Act 272 which amends the HHCA to change the qualification requirements of successors to Hawaiian Home leases. In accordance with section 4 of the Hawaii Admission Act, this legislation was submitted to Congress for consent to Act 272.

The purposes of Act 272 are to reduce the successorship requirement for the spouse and children of lessees from one-half to one-quarter Hawaiian ancestry, to allow lessees to select a successor and to allow the Department of Hawaiian Home Lands, as trustee of the Act, to select a successor when the lessee fails to designate one.

Currently, the HHCA requires that designated successors must be of at least one-half Hawaiian ancestry. However, in some cases, homesteaders of one-half Hawaiian ancestry have spouses who are non-native and neither the lessee's spouse nor children have the one-half ancestry requirement to qualify as successors. Act 272 would allow a lessee, in such a case, to designate a successor of at least one-quarter Hawaiian ancestry. The Act would apply only to successors of lessees. Since 1975, a total of eight leases were canceled because the spouse or children of the deceased lessee did not meet the one-half Hawaiian ancestry requirement.

In passing Act 272, the State of Hawaii believed that the loss of a family lease because the spouse or children did not meet the one-half ancestry requirement was inconsistent with the intent of the HHCA to return Native Hawaiians to the land. The Act would encourage family continuity, reinforce the concept of ancestral lands and discourage speculation on Hawaiian home lands. Since 1982, approximately 500, or 16 percent, of the Department of Hawaiian Home Lands lessees have requested that upon their death, the appraised value of the improvements on their lease be left to their spouse or children because they do not qualify as successors. This lack of continuity in land provides few incentives to a homesteading family to improve and maintain their homes and property.

Act 272 also amends the HHCA to provide greater flexibility in designating a successor. Instead of being required to designate a successor upon awarding of a lease, Act 272 would allow a lessee to designate a successor at any time while holding the lease. The

State felt that this flexibility, along with the reduced ancestry requirement, would advance the purposes of the HHCA by allowing the lessee more time and more persons from which to designate a qualified successor.

Finally, Act 272 would restrict the current authority of the Department of Hawaiian Home Lands to designate a successor, to designating the surviving spouse or a surviving child if there is no qualified spouse.

H.J. Res. 17, as originally introduced in the house of Representatives, provided the consent of the United States only for Act 272, regarding ancestry requirements for lessees. However, H.J. Res. 17 was amended by the House to consent to other amendments made by the State of Hawaii to the HHCA. In testimony before the House and the Committee, the Department of the Interior recommended that all other amendments which may require U.S. consent also be given consent in order to clarify or avoid any ambiguity as to their legal status.

This recommendation of the Department was among several recommendations of the Federal-State Task Force on the Hawaiian Homes Commission Act. The Task Force, jointly established by the Secretary of the Interior and the Governor of Hawaii, conducted a comprehensive review of the HHCA in 1982–83 with the objective of making recommendations on ways to better effectuate the purposes of the Act. More specifically, the Task Force recommended that: "As soon as possible, the State of Hawaii should seek to obtain the consent of the United States to all amendments to the HHCA that are required to have such consent under the Hawaii Admission Act." In its analysis of the amendments which have been made to the HHCA (Appendix 8 of the Task Force report), the Task Force recommended that all amendments, with the exception of Act 112, approved June 8, 1981, should be consented to by the United States. Since the completion of the Task Force report in 1983, the Department has updated this recommendation to include the recommendation that all amendments made since 1983, should also be consented to, again with the exception of Act 112. This Act, which concerns the method of appraising lessees' interests, was excluded from the consent list because it is in irreconcilable conflict with later amendments. In order to avoid confusion, the Department recommended that the more recent amendments should apply, and therefore, should receive consent.

Not including Acts 112 and 272, there are 52 other acts amending the HHCA. These additional amendments fall into two general categories; one, those which *may* constitute a reduction of benefits to lessees, and two, those which are either administrative or add benefits, but to which the Hawaii State Legislature added a severability clause, thereby suggesting that the State legislature believed consent may be required. In all of the cases, the Task Force and the Department recommended that, in order to clarify and potential ambiguities, all 52 amendments must receive consent. This is in addition to Act 272 which clearly reduces benefits to lessees and must receive consent to become effective.

The amendments being ratified are contained in the following Acts of the Hawaii legislature:

Session Laws of Hawaii, 1959, Act 13.

Session Laws of Hawaii, 1961, Act 183.
Session Laws of Hawaii, 1962, Acts 14, 18.
Session Laws of Hawaii, 1963, Acts 114, 207.
Session Laws of Hawaii, 1965, Acts 4, 30, 223, 271.
Session Laws of Hawaii, 1967, Act 146.
Session Laws of Hawaii, 1968, Act 29.
Session Laws of Hawaii, 1969, Acts 114, 259.
Session Laws of Hawaii, 1972, Acts 76, 173.
Session Laws of Hawaii, 1973, Acts 66, 130, 220.
Session Laws of Hawaii, 1974, Acts 170, 172, 173, 174, 175, 176.
Session Laws of Hawaii, 1976, Acts 23, 24, 72, 120.
Session Laws of Hawaii, 1977, Act 174.
Session Laws of Hawaii, 1978, Acts 204, 229.
Session Laws of Hawaii, 1979, Act 209.
Session Laws of Hawaii, 1981, Acts 90, 158, 192, 203.
Session Laws of Hawaii, 1982, Acts 272, 274, 275.
Session Laws of Hawaii, 1983, Acts 125, 143, 147.
Session Laws of Hawaii, 1984, Acts 27, 36, 37, 199, 260.
Session Laws of Hawaii, 1985, Acts 60, 69, 137, 159, 284, 295.

In order that future amendments requiring U.S. consent receive consideration in a timely manner, the Committee would encourage the Secretary of the Interior and the Governor of the State of Hawaii to enter into consultations regarding the manner in which such amendments will be brought to the attention of the Congress. The Committee requests that a report, including a plan of implementation and the appropriate scope of assistance to be provided by each party, be submitted to the Committee within 180 days of the passage of this legislation.

LEGISLATIVE HISTORY

H.J. Res. 17 was introduced in the House on January 3, 1985, and on February 5, 1985, a Senate companion measure, S.J. Res. 42, was introduced. On November 21, 1985, the House Committee on Interior and Insular Affairs held a hearing on H.J. Res. 17. The measure was reported (House Rept. 99-473) on February 25, 1986, with an amendment adopting all of the amendments made to the HHCA by the Hawaii legislature from August 21, 1959, to June 30, 1985, except Act 112 of 1981. The measure was passed by the House on April 8, 1986, and was referred to the Senate Committee on Energy and Natural Resources. The Committee held a hearing on August 13, 1986, and on September 16, 1986, the Committee ordered the measure reported without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 16, 1986, by unanimous voice vote of a quorum present, recommends that the Senate pass H.J. Res. 17 as ordered reported.

COST AND BUDGETARY CONSIDERATIONS

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 18, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H J. Res. 17, a bill to consent to amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, as ordered reported by the Senate Committee on Energy and Natural Resources, September 17, 1986.

H.J. Res. 17 would grant Congressional consent to amendments to the Hawaiian Homes Commission Act adopted between August 21, 1959 and June 30, 1985, by the State of Hawaii. We estimate that no cost to the federal government or to state or local governments would result from enactment of this legislation.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD GRAMLICH,
(for Rudolph G, Penner).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.J. Res. 17. The measure would not impose any additional Government-established standards or significant economic responsibilities on private individuals. Little, if any, additional personal information would be collected as a result of enactment of this measure. Therefore, there would be no impact on personal privacy.

No additional paperwork would be required from the enactment of H.J. Res. 17. However, this report does request that the Department of the Interior and the Governor of the State of Hawaii report to the Committee within 180 days of passage of this legislation.

EXECUTIVE COMMUNICATIONS

During the Committee's August 13, 1986, hearing on H.J. Res. 17, the Department of the Interior testified in support of passage of the measure. The entire text of the Department's statement is a part of the hearing record.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the resolution, H.J. Res. 17, as reported.

APPENDIX

Following is a printing of the Hawaiian Homes Commission Act, 1920, as amended by the State of Hawaii through June 30, 1985, except for Act 112, 1981.

HAWAIIAN HOMES COMMISSION ACT, 1920

(Act of July 9, 1921, c 42, 42 Stat 108)

[As amended through June 30, 1985, showing the content of the act if the United States Congress were to consent to all amendments adopted between August 21, 1959, and June 30, 1985 except for Act 112 of the Legislature of Hawaii, 1981]

Bracketed section headings have been inserted and are not official.

TITLE 1: DEFINITIONS

§ 1. That this Act may be cited as the "Hawaiian Homes Commission Act, 1920."

§ 2. That when used in this Act the term "Hawaiian Organic Act" means the Act entitled "An Act to provide a government for the Territory of Hawaii," approved April 30, 1900, as amended.

TITLE 2: HAWAIIAN HOMES COMMISSION

§ 201. [Definitions.] (a) That when used in this title:

(1) The term "commission"means the Hawaiian Homes Commission;

(2) The term "public land" has the same meaning as defined in paragraph (3) of subdivision (a) of section 73 of the Hawaiian Organic Act;

(3) The term "fund" means the Hawaiian home loan fund;

(4) The term "State" means the State of Hawaii;

(5) The term "Hawaiian homelands" means all lands given the status of Hawaiian home lands under the provisions of section 204 of this title;

(6) The term "tract" means any tract of Hawaiian home lands leased, as authorized by section 207 of this title, or any portion of such tract;

(7) The term "native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778;

(8) The term "irrigated pastoral land" means land not in the description of the agricultural land but which, through irrigation, is capable of carrying more livestock the year through than first-class pastoral land.

(b) Any term defined or described in section 347 or 351 of the Revised Laws of Hawaii of 1915, except a term defined in subdivision

(a) of this section, shall, whenever used in this title, have the same meaning as given by such definition or description.

§ 202. Department officers, staff, commission, members, compensation. (a) There shall be a department of Hawaiian home lands which shall be headed by an executive board to be known as the Hawaiian homes commission. The members of the commission shall be nominated and approved in accordance with section 26-34. Hawaii Revised Statutes. The commission shall be composed of eight members, as follow: three shall be residents of the city and county of Honolulu, one shall be a resident of the county of Hawaii, two shall be residents of the county of Maui one of whom shall be a resident from the island of Molokai, one shall be a resident of the county of Kauar, and the eight member shall be the chairman of the Hawaiian Homes Commission. All members shall have been residents of the State at least three years prior to their appointment and at least four of the members shall be descendants of not less than one-fourth part of the blood of the races inhabiting the Hawaiian islands previous to 1778. The members of the commission shall serve without pay, but shall receive actual expenses incurred by them in the discharge of their duties as such members. The governor shall appoint the chairman of the commission from among the members thereof.

The commission may delegate to the chairman such duties, powers, and authority or so much thereof, as may be lawful or proper for the performance of the functions vested in the commission. The chairman of the commission shall serve in a full-time capacity. He shall, in such capacity, perform such duties, and exercise such powers and authority, or so much thereof, as may be delegated to him by the commission as herein provided above.

(b) the provisions of section 76-16, Hawaii Revised Statutes, shall apply to the positions of the first deputy and private secretary to the chairman of the commission. The department may hire temporary staff on a contractual basis not subject to chapters 76, 77, and 78, Hawaii Revised Statutes, when the services to be performed will assist in carrying out the purposes of the Act. These positions may be funded through appropriations for capital improvement program projects and by the administration account development, operating funds, or native Hawaiian rehabilitation fund. No contract shall be for a period longer than two years, but individuals hired under contract may be employed for a maximum of six years; provided that the six-year limitation shall not apply if the department with the approval of the governor, determines that such contract individuals are needed to provide critical services for the efficient functioning of the department. All other positions in the department shall be subject to chapters 76 and 77. Hawaii Revised Statutes.

All vacancies and new positions which are covered by the provisions of chapters 76 and 77, Hawaii Revised Statutes, shall be filled in accordance with the provisions of section 76-23 and 76-31, Hawaii Revised Statutes, provided that the provisions of these sections shall be applicable first to qualified persons of Hawaiian extraction.

§ 203. **[Certain public lands designated "available lands."]** All public lands of the description and acreage, as follows, excluding (a)

all lands within any forest reservation, (b) all cultivated sugar-cane lands, and (c) all public lands held under a certificate of occupation, homestead lease, right of purchase lease, or special homestead agreement, are hereby designated, and hereinafter referred to as "available lands":

(1) On the island of Hawaii: Kamaoa-Puueo (eleven thousand acres, more or less), in the district of Kau; Puukapu (twelve thousand acres, more or less), Kawaihae 1 (ten thousand acres, more or less), and Pauahi (seven hundred and fifty acres, more or less), in the district of South Kohala; Kamoku-Kapulena (five thousand acres, more or less), Waimanu (two hundred acres, more or less), Nienie (seven thousand three hundred and fifty acres, more or less), in the district of Hamakua; fifty-three thousand acres to be selected by the department from the lands of Humuula Mauka, in the district of North Hilo; Panaewa, Waiakea (two thousand acres, more or less), Waiakea-kai, or Keaukaha (two thousand acres, more or less), and two thousand acres of agricultural lands to be selected by the department from the lands of Piihonua, in the district of South Hilo; and two thousand acres to be selected by the department from the lands of Kaohe-Makuu, in the district of Puna; land at Keaukaha, Hawaii, more particularly described as follows:

PARCEL 1

Now set aside as Keaukaha Beach Park by Executive Order Numbered 421, and being a portion of the Government land at Waiakea, South Hilo, Hawaii.

Beginning at the southeast corner of this parcel of land, on the north side of Kalanianaole Road, the coordinates of said point of beginning referred to Government survey triangulation station "Halai" being five thousand six hundred and eighty-one and twelve one-hundredths feet north and seventeen thousand nine hundred and thirty-three and fifteen one-hundredths feet east, as shown on Government Survey Registered Map Numbered 2704, and running by true azimuths.

1. Sixty-one degrees fifty-eight minutes one thousand three hundred and fifty-one and seventy-three one-hundredths feet along the north side of Kalanianaole Road (fifty feet wide);

2. One hundred and fifty-one degrees fifty-eight minutes eight hundred and forty feet along United States military reservation for river and harbor improvements (Executive Order Numbered 176);

Thence along the seashore at high-water mark, the direct azimuths and distances between points at seashore being:

3. Two hundred and eighty-two degrees no minutes four hundred and sixty-eight and fifty one-hundredths feet;

4. Three hundred and thirteen degrees twenty minutes four hundred and forty-one feet;

5. Two hundred and sixty degrees twenty minutes one hundred and forty feet;

6. Two hundred and forty-two degrees twenty minutes two hundred and fifty feet;

7. One hundred and eighty-eight degrees forty minutes sixty feet;

8. Two hundred and seventy-two degrees twenty minutes one hundred and seventy feet;

9. Two hundred and five degrees no minutes sixty feet;
10. One hundred and ten degrees twenty minutes two hundred and twenty feet;
11. Ninety degrees fifty minutes eighty feet;
12. One hundred and sixty-two degrees no minutes one hundred and seventy feet;
13. Two hundred and fifty degrees thirty minutes four hundred and thirty feet;
14. Three hundred and thirty-one degrees fifty-eight minutes three hundred and eighty feet along parcel II of Government land to the point of beginning and containing an area of eleven and twenty one-hundredths acres, more or less.

PARCEL II

Being a portion of the Government land of Waiakea, South Hilo, Hawaii, and located on the north side of Kalanianaole Road and adjoining parcel I, hereinbefore described.

Beginning at the south corner of this parcel of land, on the north side of Kalanianaole Road, the coordinates of said point of beginning referred to Government survey triangulation station "Halai," being five thousand six hundred and eighty-one and twelve one-hundredths feet north and seven thousand nine hundred and thirty-three and fifteen one-hundredths feet east and running by true azimuths:

1. One hundred and fifty-one degrees fifty-six minutes three hundred and eighty feet along the east boundary of parcel I;
2. Two hundred and twenty-nine degrees forty-five minutes thirty seconds one hundred and ninety-one and one one-hundredths feet;
3. One hundred and ninety-eight degrees no minutes two hundred and thirty feet to a one-and-one-half inch pipe set in concrete;
4. Three hundred and seven degrees thrity-eight minutes five hundred and sixty-two and twenty-one one-hundredths feet to a one-and-one-half inch pipe set in concrete;
5. Twenty-eight degrees no minutes one hundred and twenty-one and thirty-seven one-hundredths feet to the north side of Kalanianaole Road;
6. Sixty-one degrees fifty-eight minutes four hundred and eighty-three and twenty-two one-hundredths feet along the north side of Kalanianaole Road to the point of beginning and containing an area of five and twenty-six one-hundredths acres, more or less.

(2) On the island of Maui:* Kahikinui (twenty-five thousand acres, more or less) in the district of Kahikinui, and the public lands (six thousand acres, more or less) in the district of Kula;

(3) On the island of Molokai: Palaau (eleven thousand four hundred acres, more of less), Kapaakea (two thousand acres, more or less), Kalamaula (six thousand acres, more of less), Hoolehua (three thousand five hundred acres, more or less), Kamiloloa I and II (three thousand six hundred acres, more or less), and Makakupaia (two thousand two hundred acres, more or less) and Kalaupapa (five thousand acres, more or less);

*See second to last paragraph of this section as added by Act of June 3, 1948, c 384, referring to available lands at Wailuku, Maui.

(4) On the island of Oahu: Nanakuli (three thousand acres, more or less), and Lualualei (two thousand acres, more or less), in the District of Waianae; and Waimanalo (four thousand acres, more or less), in the District of Koolaupoko, excepting therefrom the military reservation and the beach lands; and those certain portions of the lands of Auwaiolimu, Kewalo, and Kalawahine described by metes and bounds as follows, to-wit:

(I) Portion of the Government land at Auwaiolimu, Punchbowl Hill, Honolulu, Oahu, described as follows:

Beginning at a pipe at the southeast corner of this tract of land, on the boundary between the lands of Kewalo and Auwaiolimu, the coordinates of said point of beginning referred to Government Survey triangulation station "Punchbowl," being one thousand one hundred and thirty-five and nine-tenths feet north and two thousand five hundred and fifty-seven and eight-tenths feet east as shown on government Survey Registered Map Numbered 2692, and running by true azimuths:

1. One hundred and sixty-three degrees thirty-one minutes two hundred and thirty-eight and eight-tenths feet along the east side of Punchbowl-Makiki Road;

2. Ninety-four degrees eight minutes one hundred and twenty-four and nine-tenths feet across Tantalus Drive and along the east side of Puuowaina Drive;

3. One hundred and thirty-one degrees thirteen minutes two hundred and thirty-two and five-tenths feet along a twenty-five foot roadway;

4. One hundred and thirty-nine degrees fifty-five minutes twenty and five-tenths feet along same;

5. One hundred and sixty-eight degrees seventeen minutes two hundred and fifty-seven and eight-tenths feet along Government land (old quarry lot);

6. One hundred and fifty-six degrees thirty minutes three hundred and thirty-three feet along same to a pipe;

7. Thence following the old Auwaiolimu stone wall along L.C. Award Numbered 3145, to Laenui, grant 5147 (lot 8 to C.W. Booth), L.C. Award Numbered 1375, to Kapule, and L.C. Award Numbered 1355, to Kekuanoni, the direct azimuth and distance being two hundred and forty-nine degrees forty-one minutes one thousand three hundred and three and five-tenths feet;

8. Three hundred and twenty-one degrees, twelve minutes, six hundred and ninety-three feet along the remainder of the land of Auwaiolimu;

9. Fifty-one degrees, twelve minutes, one thousand and four hundred feet along the land of Kewalo to the point of beginning, containing an area of twenty-seven acres, excepting and reserving therefrom Tantalus Drive and Auwaiolimu Street crossing this land.

(II) Portion of the land of Kewalo, Punchbowl Hill, Honolulu, Oahu, being part of the lands set aside for the use of the Hawaii Experiment Station of the United States Department of Agriculture by proclamation of the Acting Governor of Hawaii, dated June 10, 1901, and described as follows:

Beginning at the northeast corner of this lot, at a place called "Puu Ea" on the boundary between the lands of Kewalo and

Auwaiolimu, the coordinates of said point of beginning referred to Government survey triangulation station "Punchbowl," being three thousand two hundred and fifty-five and six-tenths feet north and five thousand two hundred and forty-four and seven-tenths feet east, as shown on Government Survey Registered Map Numbered 2692 of the State of Hawaii, and running by true azimuths:

1. Three hundred and fifty-four degrees thirty minutes nine hundred and thirty feet along the remainder of the land of Kewalo, to the middle of the stream which divides the lands of Kewalo and Kalawahine;

2. Thence down the middle of said stream along the land of Kalawahine, the direct azimuth and distance being forty-nine degrees sixteen minutes one thousand five hundred and twelve and five-tenths feet;

3. One hundred and forty-one degree twelve minutes eight hundred and sixty feet along the remainder of the land of Kewalo;

4. Two hundred and thirty-one degree twelve minutes five hundred and fifty-two and six-tenths feet along the land of Auwaiolimu to "PUU IOLE";

5. Thence still along the said land of Auwaiolimu following the top of the ridge to the point of beginning, the direct azimuth and distance being two hundred and thirty-two degrees twenty-six minutes one thousand four hundred and seventy feet and containing an area of thirty acres; excepting and reserving therefrom Tantalus Drive crossing this land;

[(III) Repealed. Act of Jul. 9, 1952, c 614, § 1, 66 Stat 511]

(IV) Portion of the Hawaii Experiment Station under the control of the United States Department of Agriculture, situated on the northeast side of Auwaiolimu Street.

KEWALO-UKA, HONOLULU, OAHU

Being a portion of the land of Kewalo-uka conveyed by the Territory of Hawaii to the United States of America by proclamations of the Acting Governor of Hawaii, Henry S. Cooper, dated June 10, 1901, and August 16, 1901, and a portion of the United States Navy Hospital reservation described in Presidential Executive Order Numbered 1181, dated March 25, 1910.

Beginning at the west corner of this parcel of land, on the Auwaiolimu-Kewalo-uka boundary and on the northeast side of Auwaiolimu Street, the coordinates of said point of beginning referred to Government survey triangulation station "Punchbowl," being one thousand two hundred and thirty and fifty-eight one-hundredths feet north and two thousand six hundred and seventy-five and six one-hundredths feet east as shown on Government Survey Registered Map Numbered 2985 and running by azimuths measured clockwise from true south:

1. Two hundred and thirty-one degrees twelve minutes one thousand two hudnred and forty-eight and twenty-six one-hundredths feet along the land of Auwaiolimu;

2. Three hundred and twenty-one degrees twelve minutes eight hundred and sixty feet along Hawaiian home land as described in Presidential Executive Order Numbered 5561;

3. Thence down along the middle of stream in all its turns and windings along the land of Kalawahine to the north corner of Roosevelt High School lot, the direct azimuth and distance being thirty-three degrees forty-eight minutes forty seconds one thousand one hundred and twelve and twenty one-hundredths feet;

Thence still down along the middle of stream for the next seven courses along the Roosevelt High School premises, the direct azimuth and distances between points in middle of said stream being:

4. Twenty-three degrees forty minutes twenty-eight and ninety one-hundredths feet;

5. Eight degrees no minutes one hundred and fifteen feet;

6. Three hundred and thirty-seven degrees fifty minutes forty-eight feet;

7. Two degrees thirty minutes sixty feet;

8. Forty-nine degrees forty minutes fity-two feet;

9. Forty-six degrees six minutes ninety and seventy one-hundredths feet;

10. Ninety-two degrees forty-three minutes ninety-five and sixty one-hundredths feet; thence

11. Eighty-three degrees thirty-eight minutes seventy-one and sixty-three one-hundredths feet along state land to the northeast side of Auwaiolimu Street;

12. Thence on a curve to the left with a radius of one thousand one hundred and seventy-six and twenty-eight one-hundredths feet along the northeast side of Auwaiolimu Street along land described in Presidential Executive Order Numbered 1181, dated March 25, 1910, the direct azimuth and distance being one hundred and seventy-two degrees twenty-nine minutes thirty-five seconds one hundred and sixty-four and thirty-nine one-hundredths feet;

13. Thence continuing on a curve to the left with a radius of one thousand one hundred and seventy-six and twenty-eight one-hundredths feet along the northeast side of Auwaiolimu Street, the direct azimuth and distance being one hundred and sixty degrees fifty minutes forty-eight seconds three hundred and twelve and seventy-five one-hundredths feet;

14. Two hundred and twenty-four degrees fifty-three minutes six hundred and seventy and sixty-five one-hundredths feet along the Quarry Reservation (State of Hawaii, owner);

15. One hundred and ten degrees six minutes two hundred and thirty-nine and twenty one-hundredths feet along same;

16. Ninety-two degrees five minutes two hundred and two and twenty one-hundredths feet along same;

17. Fifty-three degrees twenty minutes three hundred and forty and thirty-four one-hundredths feet along same;

18. One hundred and forty-two degrees thirty minutes four hundred and twenty-four and sixty-eight one-hundredths feet along the northeast side of Auwaiolimu Street to the point of beginning and containing an area of twenty-seven and ninety one-hundredths acres; excepting and reserving therefrom that certain area included in Tantalus Drive, crossing this land.

(V) Portion of Kewalo-uka Quarry Reservation. Situate on the northeast side of Auwaiolimu Street.

KEWALO-UKA, HONOLULU, OAHU

Being land reserved by the State of Hawaii within the Hawaii Experiment Station under the control of the United States Department of Agriculture, as described in proclamations of the Acting Governor of Hawaii, Henry E. Cooper, dated June 10, 1901.

Beginning at the northwest corner of this parcel of land and on the northeast side of Auwaiolimu Street, the coordinates of said point of beginning referred to Government survey triangulation station "Punchbowl," being eight hundred and ninety-three and sixty-six one-hundredths feet north and two thousand nine hundred and thirty-three and fifty-nine one-hundredths feet east as shown on Government Survey Registered Map Numbered 2985 and running by azimuths measured clockwise from true south:

1. Two hundred and thirty-three degrees twenty minutes three hundred and forty and thirty-four one-hundredths feet along the Hawaii Experiment Station under the control of the United States Department of Agriculture;
2. Two hundred and seventy-two degrees five minutes two hundred and two and twenty one-hundredths feet along same;
3. Two hundred and ninety degrees six minutes two hundred and thirty-nine and twenty one-hundredths feet along same;
4. Forty-four degrees fifty-three minutes six hundred and seventy and sixty-five one-hundredths feet along same to the northeast side of Auwaiolimu Street;
5. Thence on a curve to the left with a radius of one thousand one hundred and seventy-six and twenty-eight one-hundredths feet along the northeast side of Auwaiolimu Street, the direct azimuth and distance being one hundred and forty-seven degrees fifty-one minutes thirteen seconds two hundred and nineteen and fifty one-hundredths feet;
6. One hundred and forty-two degrees thirty minutes one hundred and thirty-four and fifty-five one-hundredths feet along the northeast side of Auwaiolimu Street;
7. Two hundred and thirty-two degrees thirty minutes twenty feet along same;
8. One hundred and forty-two degrees thirty minutes seventy-one and fifty-seven one-hundredths feet along same to the point of beginning and containing an area of four and six hundred and forty-six one-thousandths acres.

(VI) Being a portion of government land of Auwaiolimu, situated on the northeast side of Hawaiian home land of Auwaiolimu and adjacent to the land of Kewalo-uka at Pauoa Valley, Honolulu, Oahu, State of Hawaii. Beginning at a pipe in concrete at the south corner of this parcel of land, being also the east corner of Hawaiian home land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl," being two thousand twelve and seventy-five one-hundredths feet south and three thousand six hundred forty-seven and eighty-seven one-hundredths feet east, and thence running by azimuths measured clockwise from true south.

1. One hundred and forty-one degrees twelve minutes six hundred and ninety-three feet along Hawaiian home land;

2. Thence along middle of stone wall along L.C.Aw. 1356 to Kekuanoni, Grant 5147, Apana 1 to C.W.Booth, L.C.Aw. 1351 to Kamakainau, L.C.Aw. 1602 to Kahawai, Grant 4197 to Keaulioa, L.C.Aw. 5235 to Kaapuiki and Grant 2587 to Haalela;

3. Two hundred and ninety-five degrees thirty minutes three hundred and twenty feet along the remainder of government land of Auwaiolimu;

4. Twenty-four degrees sixteen minutes thirty seconds one thousand five hundred seventy-nine and thirty-six one-hundredths feet along the remainder of government land of Auwaiolimu;

5. Thence along middle of ridge along the land of Kewalo-uka to a point called "Puu Iole" (pipe in concrete monument), the direct azimuth and distance being fifty-six degrees no minutes eight hundred and thirty feet;

6. Fifty-two degrees twelve minutes five hundred fifty-two and sixty one-hundredths feet along the land of Kewalo-uka to the point of beginning and containing an area of thirty-three and eighty-eight one-hundredths acres, more or less.

(VII) Being portions of government lands of Kewalo-uka and Kalawahine situated on the east side of Tantalus Drive at Pauoa Valley, Honolulu, Oahu State of Hawaii. Beginning at the west corner of this parcel of land, the true azimuth and distance to a point called "Puu Ea" (pipe in concrete monument) being one hundred and seventy-four degrees thirty minutes four hundred one and ninety-nine one-hundredths feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl" being two thousand eight hundred fifty-five and ten one-hundredths feet north and five thousand two hundred eighty-two and twenty-five one-hundredths feet east and thence running by azimuths measured clockwise from true south:

1. Two hundred and forty-eight degrees nineteen minutes forty seconds eight hundred fifty and fifty-four one-hundredths feet along the land for Kewalo-uka;

2. Sixteen degrees thirty minutes five hundred feet along the land of Kewalo-uka, along the land of Kalawahine;

3. Twenty-five degress no minutes five hundred feet along the land of Kalawahine;

4. Thirty-five degrees no minutes three hundred and twenty feet along the land of Kalawahine;

5. Fifty degrees forty-six minutes ninety-six and seventy one-hundredths feet along Makiki Forest Ridge lots;

6. Seventy-three degrees twenty minutes two hundred fifty-five and ninety one-hundredths feet along Makiki Forest Ridge lots;

7. Eighty-six degrees thirty-two minutes one hundred sixty-three and forty one-hundredths feet along Makiki Forest Ridge lots;

8. Thence along the south side of Tantalus Drive on a curve to the right with a radius of two hundred and seventy feet, the direct azimuth and distance being two hundred and twenty-one degrees twelve minutes nineteen seconds ninety-eight and thirty-six one-hundredths feet;

9. Two hundred and thirty-one degrees forty-two minutes one hundred ninety-three and thirty-five one-hundredths feet along the south side of Tantalus Drive;

10. Still along Tantalus Drive on a curve to the left with a radius of one hundred eighty and seventy-eight one-hundredths feet, the direct azimuth and distance being one hundred and eighty-one degrees forty-five minutes fifty-five seconds two hundred seventy-six and seventy-two one-hundreths feet;

11. Two hundred and forty-two degrees fifteen minutes sixty-two and thirty-two one-hundredths feet along the land of Kewalo-uka;

12. One hundred and seventy-four degrees thirty minutes five hundred twenty-eight and one one-hundredths feet along the land of Kewalo-uka to the point of beginning and containing an area of five hundred and seventy-four thousand seven hundred and thirty square feet or thirteen and one hundred ninety-four one-thousandths acres.

(5) On the island of Kauai:* Upper land of Waimea, above the cultivated sugar cane lands, in the district of Waimea (fifteen thousand acres, more or less); and Moloaa (two thousand five hundred acres, more or less), and Anahola and Kamalomalo (five thousand acres, more or less).

Wailuku, Maui: That parcel of government land, situate in the District of Wailuku, Island and County of Maui, comprising twelve and four hundred and fifty-five one-thousandths acres of the ILI OF KOU and being a portion of the land covered by General Lease Numbered 2286 to Wailuku Sugar Company, Limited, notwithstanding the fact that said parcel is cultivated sugar cane land, subject, however, to the terms of said lease.

Cultivated Sugar Cane Lands: That parcel of Anahola, Island of Kauai, comprising four hundred and one and four hundred and twenty-three one-thousandths acres, hereinafter described and being portion of the land covered by general lease numbered 2724 to the Lihue Plantation Company, Limited, notwithstanding the fact that said parcel is cultivated sugar cane land, subject however, to the terms of said lease, said parcel being more particularly described as follows:

Being a portion of land described in general lease numbered 2724 to the Lihue Plantation Company situate in the district of Anahola, Kauai, State of Hawaii, beginning at the northwest corner of this parcel of land, the coordinates of which referred to government triangulation station south base are three thousand and forty-nine and sixty-two one-hundredths feet south, one thousand nine hundred and thirty-two and twenty-five one-hundredths feet west, and running thence by azimuths measured clockwise from true south two hundred and eighty-four degrees thirty minutes two hundred and fifty feet, thence on the arc of circular curve to the left, with a radius of eight hundred and ninety feet and a central angle of thirty-five degrees fifteen minutes, the direct azimuth and distance being two hundred and sixty-six degrees fifty-two minutes thirty seconds five hundred and thirty-eight and ninety-six one-hundredths feet, thence two hundred and forty-nine degrees fifteen minutes one thousand eight hundred and nine and twenty-five one-hundredths feet, thence two hundred and twenty-four degrees fifteen minutes three thousand fifty-six feet, thence one hundred and

* See last paragraph of this section as added by Act of June 3, 1948, c 397, 62 Stat. 303.

thirty-four degrees fifteen minutes two hundred and seven feet, to the seashore at Anahola Bay, thence along the seashore around Kahala Point, the direct azimuth and distance being two hundred and thirty-seven degrees six minutes seven seconds one thousand and sixty and fourteen one-hundredths feet, thence along the seashore, the direct azimuth and distance being three hundred and thirty-two degrees no minutes one thousand eight hundred and twenty-seven feet, thence along the seashore, the direct azimuth and distance being three hundred and fifty-five degrees no minutes one thousand eight hundred and twenty-seven feet, thence eighty-seven degrees twenty minutes seven hundred and forty feet, thence fifty-nine degrees no minutes two thousand seven hundred and fifteen feet, thence sixty-nine degrees fifteen minutes one thousand eight hundred and eighty-seven and thirty-six one-hundredths feet, thence on the arc of a circular curve to the right with a radius of three thousand and twelve feet, and a central angle of thirty-five degrees fifteen minutes the direct azimuth and distance being eighty-six degrees fifty-two minutes thirty seconds one thousand eight hundred and twenty-three and ninety-eight one-hundredths feet, thence one hundred and four degrees thirty minutes two hundred and fifty feet, thence one hundred and ninety-four degrees thirty minutes one thousand and thirty-one feet, thence on the arc of a circular curve to the left with a radius of six hundred and seven and ninety-five one-hundredths feet and a central angle of fifty-three degrees three minutes thirty seconds the direct azimuth and distance being seventy-seven degrees fifty-eight minutes fifteen seconds five hundred and forty-three and nine one-hundredths feet to the government road, thence two hundred and thirty-one degrees twenty-six minutes thirty seconds one hundred and thirteen and sixty-one one-hundredths feet along the government road, thence along the government road on the arc of a circular curve to the left with a radius of four hundred and seventy-seven feet and a central angle of forty-four degrees twenty-six minutes thirty seconds, the direct azimuth and distance being two hundred and nine degrees thirteen minutes fifteen seconds three hundred and sixty and seventy-eight one-hundredths feet, thence one hundred and eighty-seven degrees no minutes one hundred and sixty-nine and fifty-four one-hundredths feet along the government road, thence on the arc of a circular curve to the left with a radius of three hundred and fifty-one and eight one-hundredths feet and a central angle of eighty-two degrees thirty minutes the direct azimuth and distance being three hundred and twenty-five degrees forty-five minutes four hundred and sixty-two and ninety-seven one-hundredths feet, thence one hundred and ninety-four degrees thirty minutes five hundred and seventy-nine feet, thence one hundred and four degrees thirty minutes three hundred feet, thence one hundred and ninety-four degrees thirty minutes two hundred feet, thence two hundred eighty-four degrees thirty minutes three hundred feet, thence one hundred and ninety-four degrees thirty minutes two hundred and fifty-two feet to the point of beginning containing an area of four hundred and one and four hundred and twenty-three one-thousandths acres more or less.

§ 204. Control by department of "available lands," return to board of land and natural resources, when. Upon the passage of

this Act, all available lands shall immediately assume the status of Hawaiian home lands and be under the control of the department to be used and disposed of in accordance with the provisions of this Act, except that:

(1) In case any available land is under lease by the Territory of Hawaii, by virtue of section 73 of the Hawaiian Organic Act, at the time of the passage of this Act, such land shall not assume the status of Hawaiian home lands until the lease expires or the board of land and natural resources withdraws the lands from the operation of the lease. If the land is covered by a lease containing a withdrawal clause, as provided in section 73(d) of the Hawaiian Organic Act, the board of land and natural resources shall withdraw such lands from the operation of the lease whenever the department gives notice to the board that the department is of the opinion that the lands are required by it for the purposes of this Act; and such withdrawal shall be held to be for a public purpose within the meaning of that term as used in section 73(d) of the Hawaiian Organic Act.

(2) Any available land, including lands selected by the department out of a larger area, as provided by this Act, not leased as authorized by section 207(a) of this Act, may be returned to the board of land and natural resources as provided under section 212 of this Act, or may be retained for management by the department. Any Hawaiian home lands general lease issued by the department after June 30, 1985 shall contain a withdrawal clause allowing the department to withdraw the land leased at any time during the term of the lease for the purposes of this Act.

In the management of any retained available lands not required for leasing under section 207(a), the department may dispose of those lands to the public, including native Hawaiians, on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands in chapter 171, Hawaii Revised Statutes; provided that the department may not sell or dispose of such lands in fee simple except as authorized under section 205 of this Act; provided further that the department is expressly authorized to negotiate, prior to negotiations with the general public, the disposition of a lease of Hawaiian home lands to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial, or other business purposes, in accordance with the procedure set forth in section 171-59, Hawaii Revised Statutes, subject to the notice requirement of section 171-16(c), Hawaii Revised Statutes, and the lease rental limitation imposed by section 171-17(b), Hawaii Revised Statutes.

(3) The department, with the approval of the Secretary of the Interior, in order to consolidate its holdings or to better effectuate the purposes of this Act, may exchange the title to available lands for land, privately or publicly owned, of an equal value. All lands so acquired by the department shall assume the status of available lands as though the land were originally designated as available lands under section 203 of this Act, and all lands so conveyed by the department shall assume the status of the land for which it was exchanged. The limitations

imposed by section 73(l) of the Hawaiian Organic Act and the land laws of Hawaii as to the area and value of land that may be conveyed by way of exchange shall not apply to exchanges made pursuant hereto. No such exchange of land publicly owned by the State shall be made without the approval of two-thirds of the members of the board of land and natural resources. For the purposes of this paragraph, lands "publicly owned" means land owned by a country or the State or the United States.

§ 205. [Sale or lease, limitations on]. Available lands shall be sold or leased only (1) in the manner and for the purposes set out in this title, or (2) as may be necessary to complete any valid agreement of sale or lease in effect at the time of the passage of this Act; except that such limitations shall not apply to the unselected portions of lands from which the department has made a selection and given notice thereof, or failed so to select and give notice within the time limit, as provided in paragraph (3) of section 204 of this title.*

§ 206. [Other officers not to control Hawaiian home lands; exception.] The powers and duties of the governor and the board of land and natural resources, in respect to lands of the State, shall not extend to lands having the status of Hawaiian home lands, except as specifically provided in this title.

§ 207. Leases to Hawaiians, licenses. (a) The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee: (1) not more than forty acres of agriculture lands or lands used for aquaculture purposes; or (2) not more than one hundred acres of irrigated pastoral lands and not more than one thousand acres of other pastoral lands; or (3) not more than one acre of any class of land to be used as a residence lot; provided that in the case of any existing lease of a farm lot in the Kalanianaole Settlement on Molokai, a residence lot may exceed one acre but shall not exceed four acres in area, the location of such area to be selected by the department; provided further that a lease granted to any lessee may include two detached farm lots or aquaculture lots, as the case may be, located on the same island and within a reasonable distance of each other, one of which, to be designated by the department, shall be occupied by the lessee as the lessee's home, the gross acreage of both lots not to exceed the maximum acreage of an agricultural, pastoral, or aquaculture lot, as the case may be, as provided in this section. The department is authorized to develop and construct multifamily units for housing native Hawaiians. The method of disposition, as well as the terms, conditions, covenants, and restrictions as to the use and occupancy of such multifamily units shall be prescribed by rules adopted by the department pursuant to chapter 91.

(b) The title to lands so leased shall remain in the [State]. Applications for tracts shall be made to and granted by the department, under such regulations, not in conflict with any provisions of this

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*The reference was to paragraph (3) of section 204 as originally enacted, which fixed a period of eight years after the first meeting of the commission [department]. The first meeting was held September 20, 1921.

title, as the department may prescribe. The department shall, whenever tracts are available, enter into such a lease with any applicant who, in the opinion of the department, is qualified to perform the conditions of such lease.

(c)(1) The department is authorized to grant licenses as easements for railroads, telephone lines, electric power and light lines, gas mains, and the like. The department is also authorized to grant licenses for lots within a district in which lands are leased under the provisions of this section, for:

(A) Churches, hospitals, public schools, post offices, and other improvements for public purposes; and

(B) Theaters, garages, services stations, markets, stores, and other mercantile establishments (all of which shall be owned by native Hawaiians or by organizations formed and controlled by native Hawaiians).

(2) The department is also authorized to grant licenses to the United States for reservations, roads, and other rights-of-way, water storage and distribution facilities, and practice target ranges.

(3) An license issued under this subsection shall be subject to such terms, conditions, and restrictions as the department shall determine and shall not restrict the areas required by the department in carrying on its duties, nor interfere in any way with the department's operation or maintenance activities.

§ 208. Conditions of leases. Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

(1) The original lessee shall be a native Hawaiian, not less than eighteen years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, quitclaimed, or canceled in accordance with the provisions of succeeding sections.

(2) The lessee shall pay a rental of $1 a year for the tract and the lease shall be for a term of ninety-nine years.

(3) The lessee may be required to occupy and commence to use or cultivate the tract as the person's home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the lease is made.

(4) The lessee shall thereafter, for at least such part of each year as the department shall prescribe by rules, so occupy and use or cultivate the tract on the person's own behalf.

(5) The lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, or otherwise hold, the person's interest in the tract. Such interest shall not, except in pursuance of such a transfer to or holding for or agreement with a native Hawaiian or Hawaiians approved of by the department, or for any indebtedness due the department or for taxes, or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where

such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet the person's interest in the tract or improvements thereon.

(6) Notwithstanding the provisions of paragraph (5), the lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration. Veterans Administration, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

Further, notwithstanding the authorized purposes of loan limitations imposed under section 214 of this Act and the authorized loan amount limitations imposed under section 215 of this Act, loans made by lending institutions as provided in this paragraph, insured or guaranteed by the Federal Housing Administration, Veterans Administration, or any other federal agency and their respective successors and assigns, may be for such purposes and in such amounts, not to exceed the maximum insurable limits, together with such assistance payments and other fees, as established under section 421 of the Housing and Urban Rural Recovery Act of 1983 which amended Title II of the National Housing Act of 1934 by adding section 247, and its implementing regulations, to permit the Secretary of Housing and Urban Development to insure loans secured by a mortgage executed by the homestead lessee covering a homestead lease issued under section 207(a) of this Act and upon which there is located a one to four family single family residence.

(7) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may pay such taxes and have a lien therefor as provided by section 216 of this Act.

(8) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years from date of lease.

§ 209. Successors to lessers. (a) Upon the death of the lessee, his interest in the tract or tracts and the improvements thereon, including growing crops and agricultural stock (sic)[1] (either on the tract or in any collective contract or program to which the lessee is a party by virtue of his interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee who are (1) at least one-quarter Hawaiian, husband, wife, or children, or (2) native Hawaiian,

[1] So in original. Probably should be "aquacultural" on advice of the State of Hawaii.

widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews, the lessee shall designate the person or persons to whom he directs his interest in the tract or tracts to vest upon his death. The Hawaiian blood requirements shall not apply to the descendants of those who are not native Hawaiians but who were entitled to the leased lands under the provisions of section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended. In all cases such person or persons need not be twenty-one years of age. Such designation must be in writing may be specified at the time of execution of such lease with a right in such lessee in similar manner to change such beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest such interests in the successor or successors so named.

In case of the death of any lessee, except as hereinabove provided, who has failed to specify a successor or successors as approved by the department, the department may select from only the following qualified relatives of the decedent:

(1) Husband or wife;

(2) If there is no husband or wife, then the children.

The rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of such lessee. In the case of the death of a lessee leaving no designated successor or successors, husband, wife, or children qualified to be a lessee of Hawaiian home lands, the land subject to the lease shall resume its status as unleased Hawaiian home lands and the department is authorized to lease such land to a native Hawaiian as provided in this Act.

Upon the death of a lessee who has not designated a successor and who leaves a spouse not qualified to succeed to the lease or children not qualified to succeed to the lease, or upon the death of a lessee leaving no designated sucessor or successors, husband, wife, or children qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall appraise the value of all such improvements and growing crops or improvements and aquacultural stock, as the case may be, and shall pay to the nonqualified spouse or the nonqualified children as the lessee shall have designated prior to the lessee death, or to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, from the deceased lessee or the previous lessee. Such payments shall be made out of the loan fund and shall be considered an advance therefrom reimbursable out of payments made by the successor or successors to the tract involved.

Such appraisal shall be made by three appraisers, one of which shall be named by the department, one by the previous lessee or the legal representative of the deceased lessee, as the case may be, and the third shall be selected by the two appraisers hereinbefore mentioned.

(b) After the cancellation of a lease by the department in accordance with the provisions of sections 210 and 216 of this title, or the surrender of a lease by a lessee, the department is authorized to

transfer the lease or to issue a new lease to any qualified Hawaiian regardless of whether or not he is related in any way by blood or marriage to the previous lessee.

(c) Should any successor or successors to a tract be a minor or minors, the department may appoint a guardian therefor, subject to the approval of the court of proper jurisdiction. Such guardian shall be authorized to represent the successor or successors in all matters pertaining to the household: provided, that said guardian shall, in so representing such successor or successors, comply with the provisions of this title and the stipulations and provisions contained in the lease, except that said guardian need not be a native Hawaiian as defined in section 201 of this title.

§ 210. **[Cancellation of leases.]** Whenever the department has reason to believe that any condition enumerated in section 208, or any provision of section 209, of this title has been violated, the department shall give due notice and afford opportunity for a hearing to the lessee of the tract in respect to which the alleged violation relates or to the successor of the lessee's interest therein, as the case demands. If upon such hearing the department finds that the lessee or his successor has violated any condition in respect to the leasing of such tract, the department may declare his interest in the tract and all improvements thereon to be forfeited and the lease in respect thereto canceled, and shall thereupon order the tract to be vacated within a reasonable time. The right to the use and occupancy of the Hawaiian home lands contained in such tract shall thereupon revest in the department and the department may take possession of the tract and the improvements thereon.

§ 211. **[Community pastures.]** The department shall, when practicable, provide from the Hawaiian home lands a community pasture adjacent to each district in which agricultural lands are leased, as authorized by the provisions of section 207 of this title.

§ 212. **[Lands returned to control of board of land and natural resources.]** The department may return any Hawaiian home lands not leased as authorized by the provisions of section 207 of this Act to the control of the board of land and natural resources. Any Hawaiian home lands so returned shall, until the department gives notice as hereinafter in this section provided, resume and maintain the status of public lands in accordance with the provisions of the Hawaii Revised Statutes, provided that such lands may not be sold, leased, set aside, used, transferred or otherwise disposed of except under a general lease only. Any lease by the board of land and natural resources hereafter entered into shall contain a withdrawal clause, and the lands so leased shall be withdrawn by the board, for the purpose of this Act, upon the department giving at its option, not less than one nor more than five years' notice of such withdrawl; provided, that the minimum withdrawal-notice period shall be specifically stated in such lease. Each such lease, whether or not stipulated therein, shall be deemed subject to the right and duty of the board of land and natural resources to terminate the lease and return the lands to the department whenever the department gives notice to the board that the department is of the opinion that the lands are required.

Notwithstanding the provisions of section 171-95, Hawaii Revised Statutes, in the leasing of Hawaiian home lands by the board to a

public utility or other governmental agency, where such use directly benefits the department of Hawaiian home lands or the homestead lessees, the rental may be nominal, in all other instances, the lease rental shall be no less than the value determined in accordance with section 171-17(b), Hawaii Revised Statutes.

Any general lease of Hawaiian home lands hereafter entered into by the board shall be void unless prior to the disposition of such lease by public auction, direct negotiation or otherwise, approval shall be obtained from the department of Hawaiian home lands.

§ 213. Funds and accounts. (a) There are established in the treasury of the State seven revolving funds, to be known respectively as the Hawaiian home loan fund, the additional receipts loan fund, the Hawaiian home general loan fund, the Hawaiian home replacement loan fund, the Hawaiian home repair loan fund, the Hawaiian home farm loan fund, and the Hawaiian home operating fund.

(1) Hawaiian home loan fund. Thirty per cent of the state receipts derived from the leasing of cultivated sugarcane lands under any other provision of law or from water licenses shall be deposited into this fund. The aggregate amount of this fund including:

(A) The outstanding principal of all loans, advances, and transfers which have been made to other funds for which this fund has not been or not been reimbursed; and

(B) The installments of principal paid by the lessees upon loans made to them from the fund, or payments representing reimbursements on account of advances, but not including interest on such loans or advances,

shall not exceed $5,000,000. The moneys in this fund shall be available for the purposes enumerated in section 214 of this Act.

That portion of the thirty per cent of the state receipts derived from the leasing of cultivated sugarcane lands under any other provision of law or from water licenses, in excess of the present ceiling in the Hawaiian home loan fund of $5,000,000, which amount is called "additional receipts," shall be transferred to the Hawaiian home development fund, to the additional receipts loan fund, and the Hawaiian home education fund as follows: fifteen per cent to the additional receipts loan fund; thirteen per cent to the Hawaiian home development fund; and seventy-two per cent to the Hawaiian home education fund; provided that the aggregate amount so transferred shall not exceed the maximum amount of $5,000,000.

Any interest or other earnings arising out of investments from this fund shall be credited to and deposited into the Hawaiian home operating fund.

(2) Additional receipts loan fund. Moneys transferred to this fund, installments of principal paid by the lessees upon loans made to them from this fund, or as payments representing reimbursement on account of advances, but not including interest on such loans or advances, shall be used for the purposes enumerated in section 214 of this Act.

(3) Hawaiian home general loan fund. Moneys appropriated by the legislature for the construction of homes but not other-

wise set aside for a particular fund, excluding moneys appropriated for construction of replacement homes; moneys transferred from the Hawaiian home interest fund; and installments of principal paid by the lessees upon loans made to them from this fund, or as payments representing reimbursements on account of advances, but not including interest on such loans or advances, shall be deposited into this fund. The moneys in the fund shall be used for purposes enumerated in section 214 of this Act.

(4) Hawaiian home replacement loan fund. The moneys in this fund shall be used to make loans to lessees to construct replacement homes upon their lots. Moneys appropriated by the legislature for replacement home construction loans; moneys transferred from the Hawaiian home interest fund; installments of principal paid by the lessees upon loans made to them from this fund; and moneys transferred from other funds or accounts by legislative authorization shall be deposited into this fund.

(5) Hawaiian home repair loan fund. Moneys appropriated to this fund by the legislature; moneys transferred from the Hawaiian home interest fund; and installments of principal paid by the lessees upon loans made to them for this fund shall be deposited into this fund. The moneys in this fund shall be used to make loans in amounts not in excess of $15,000 to lessees for repairs to their existing homes and for additions to such homes.

(6) Hawaiian home farm loan fund. Moneys appropriated to this fund by the legislature; moneys transferred from the Hawaiian home interest fund; and installments of principal paid by the lessees upon loans made to them from this fund shall be deposited into this fund. The moneys in this fund shall be used to make loans in the amount provided in section 215 for the development and operation of a farm, ranch, or aquaculture operation or ninety per cent of the cost of the project, whichever is less, to lessees of agricultural tracts, pastoral tracts, and tracts used for aquaculture leased under section 207 of this Act. In addition to the purposes enumerated in section 214(a) such loans may be made for the following purposes:

(A) The initial and on-going development, improvement, operation, and expansion of homestead farms, ranches, and aquaculture enterprises;

(B) The liquidation of indebtedness incurred for any of the foregoing purposes relating to farm loans aged less than five years;

(C) The payment of normal and reasonable living expenses of a full-time farmer;

(D) The planning, layout, and installation of soil and water conservation practices; or

(E) For emergency purposes to provide relief and rehabilitation to homestead farmers and ranchers due to damage by rain and wind storms, droughts, tidal wave, earthquake, volcanic eruption, and other natural catastrophies, and for livestock disease, epidemics, crop blights, and serious effects of prolonged shipping and dock strikes.

In addition to the conditions enumerated in section 215 farm loans shall be subject to the following conditions: to be eligible for a farm loan the applicant shall derive, or present an acceptable plan to derive a major portion of his income from farming; farm loans made for the purpose of soil and water conservation shall not exceed $20,000 and shall be for a term not to exceed ten years. Subsidies and grants or cost sharing funds entitled and received by the lessee for soil and water conservation purposes shall be assigned to the department for the repayment of the outstanding farm indebtedness; and the lesee is required to carry out recommended farm management practices approved by a qualified agricultural agency.

(7) Hawaiian home operating fund. The interest transferred from the Hawaiian home loan fund, all fees received by the department from any other source, and moneys transferred from the Hawaiian home interest fund, except moneys received by the Hawaiian home administration account, shall be directly deposited into the Hawaiian home operating fund. The moneys in this fund shall be available:

(A) For construction and reconstruction of revenue-producing improvements intended to principally serve occupants of Hawaiian home lands, including acquisition or lease therefor of real property and interests therein, such as water rights or other interests;

(B) For payment into the treasury of the State of such amounts as are necessary to meet the interest and principal charges for state bonds issued for such revenue-producing improvements;

(C) For operation and maintenance of such improvements constructed from such funds or other funds;

(D) For the purchase of water or other utilities, goods, commodities, supplies, or equipment needed for services, or to be resold, rented, or furnished on a charge basis to occupants of Hawaiian home lands; and

(E) For appraisals, studies, consultants (architects, engineers), or any other staff services including those in section 202(b) required to implement, develop, and operate these projects.

The moneys in this fund may be supplemented by other funds available for, or appropriated by the legislature for, the same purposes. In addition to such moneys, this fund, with the approval of the governor, may be supplemented by transfers, made on a loan basis from the Hawaiian home loan fund for a period not exceeding ten years; provided that the aggregate amount of such transfers outstanding at any one time shall not exceed $500,000.

(b) There are established in the treasury of the State eight special funds, to be known respectively as the Hawaiian home development fund, the Hawaiian home administration account, the Hawaiian loan guarantee fund, the Hawaiian home interest fund, the borrowed money fund, the Hawaiian home trust fund, the Hawaiian home education fund, and the native Hawaiian rehabilitation fund.

(1) Hawaiian home development fund. Moneys transferred to this fund shall be available with the prior written approval of

the governor for offsite improvements and development necessary to serve present and future occupants of Hawaiian home lands; for improvements, additions, and repairs to all assets owned or leased by the department excluding structures or improvements that the department is obligated to acquire under section 209 of this Act; for engineering, architectural, and planning services to maintain and develop properties; for such consultant services as may be contracted for under this Act; for purchase or lease of necessary equipment; for acquisition or lease of real property and interest therein; and for improvements constructed for the benefit of beneficiaries of this Act and not otherwise permitted in the various loan funds, the administration account, or the operating fund.

(2) Hawaiian home administration account. The entire receipts derived from any leasing of the available lands defined in section 204 of this Act and transfers from the Hawaiian home interest fund shall be deposited into this account. Any interest or other earnings arising out of investments from this fund shall be credited to and deposited into this fund. The moneys in this account shall be expended by the department for salaries and all other administration expenses of the department in conformity with general law applicable to all departments of the State, and no sums shall be expended for structures and other permanent improvements. This account shall be subject to the following conditions and requirements:

(A) The department shall, when required by the governor but not later than November 15 preceding each regular session of the legislature, submit to the state director of finance its budget estimates of expenditures for the next fiscal period in the manner required by general law.

(B) The Department's budget as approved by the governor shall be included in the governor's budget report and shall be transmitted in the legislature for its approval.

(C) Upon legislative approval of a budget, the amount appropriated shall be made available to the department. If no budget is approved by the legislature prior to its adjournment, sums accruing to this account shall not be expended for any other purpose but shall remain available for future use. Any amount in this account which is in excess of the amount approved by the legislature or made available for the fiscal period may be transferred to the Hawaiian home development fund.

(3) The Hawaiian loan guarantee fund. There may be created a fund to support the guarantee of repayment of loans made by government agencies or private lending institutions to those holding leases or licenses issued under section 207 of this Act. The department's guarantee of repayments shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made.

(4) Hawaiian home interest fund. All interest moneys from loans or investments received by the department from any fund except as provided for in each respective fund, shall be deposited into this fund. At the end of each quarter, all

moneys in this fund shall be transferred to the Hawaiian home development fund, the Hawaiian home operating fund, the Hawaiian home administration account, the Hawaiian home trust fund, and any loan fund in accordance with rules adopted by the department. Moneys transferred to the Hawaiian home administration account shall be used to fund salaries and other administrative expenses related to loan services and delinquent collection activities.

(5) Borrowed money fund. The department may borrow from government agencies or private lending institutions and deposit borrowed moneys into this fund to be used for the purpose enumerated in section 214 of this Act. Installments of principal and that part of the interest equal to the interest charged to the department by the lender paid by the lessees upon loans made to them from this fund shall be deposited into this fund; any additional interest or other earnings arising out of investments from this fund shall be credited to and deposited into the Hawaiian home interest fund.

(6) Hawaiian home trust fund. All moneys deposited into this fund shall be available for transfers into any other fund or account authorized by the Act or for any public purpose deemed by the commission to further the purposes of the Act. Public purpose, as used herein, includes the formation of an account within the Hawaiian home trust fund as a reserve for loans insured or guaranteed by the Federal Housing Administration Veterans Administration, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee loans. Notwithstanding any other law to the contrary, the new department is expressly authorized to deposit the reserve for loans in any duly organized bank in the State or elsewhere in the United States with automatic fund transfer capabilities and at such reserve amounts as shall be reasonably required by the federal agencies as a condition for participation in their respective insurance or guarantee programs.

(7) Hawaiian home education fund. Moneys transferred to this fund may be drawn upon from time to time by the department of education, with prior written approval of the governor, for such educational projects as shall be developed and directed by the department of education and department of Hawaiian home lands, provided that such projects shall be directed primarily to the educational improvement of the children of lessees, the funds to be used primarily at the preschool and elementary grade levels.

(8) Native Hawaiian rehabilitation fund.

(A) Pursuant to Article XII, Section 1, of the State Constitution thirty percent of the state receipts, derived from lands previously cultivated as sugarcane lands under any other provision of law and from water licenses, shall be deposited into this fund. The department shall use this money solely for the rehabilitation of native Hawaiians which shall include, but not be limited to, the educational, economic, political, social, and cultural processes by which

the general welfare and conditions of native Hawaiians are thereby improved and perpetuated.

(B) Any payment of principal, interest, or other earnings arising out of the loan or investment money from the fund shall be credited to and deposited into this fund.

(C) Sections 214, 215, 216, and 217 of this Act shall not apply to administration of this fund. The department is authorized to adopt rules necessary to administer and carry out the purposes of this fund.

§ 214. **Purposes of loans; authorized [actions].** (a) The department may make loans from revolving funds to any lessee to whom, or any cooperative association to which, a lease or license has been issued under section 207 of this Act. Such loans may be made for the following purposes:

(1) The repair or maintenance or purchase or erection of dwellings on any tract, and the undertaking of other permanent improvements thereon;

(2) The purchase of livestock, swine, poultry, fowl, aquaculture stock, and farm and aquaculture equipment;

(3) Otherwise assisting in the development of tracts and of farm, ranch, and aquaculture operations;

(4) The cost of breaking up, planting, and cultivating land and harvesting crops, the cost of excavating or constructing aquaculture ponds and tanks, the purchase of seeds, fertilizers, feeds, insecticides, medicines, and chemicals for disease and pest control for animals, fish, shellfish, and crops, and the related supplies required for farm, ranch, and aquaculture operations, the erection of fences and other permanent improvements for farm, ranch, and aquaculture purposes and the expense of marketing; and

(5) To assist lessees in the operation or erection of theaters, garages, service stations, markets, stores, and other mercantile establishments, all of which shall be owned by lessees of the department or by organizations formed and controlled by the lessees.

(b) In addition the department may:

(1) Use moneys in the development and operating funds, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into such undertaking, agree to such conditions, transfer funds therein available for such expenditure, and do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such projects or works;

(2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof, up to a maximum of $50,000 to lessees in accordance with section 215;

(3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a cooperative association in accordance with section 215;

(4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of such loans; provided that upon receipt of notice of default in the payment of such assured loans, the

department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: the right of succession to the lessee's interest and assumption of the contract of loan; the right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;

(5) Secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this section, shall at no time exceed $21,000,000;

(6) Use available loan fund moneys or other funds specifically available for such purposes as cash guarantees when required by lending agencies;

(7) Exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by government agencies or by private lending institutions to lessees the repayment of which is assured by the department. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment, or otherwise underwriting, of any loan, the protecting of security interest, and after foreclosures, the repairing, renovating, or modernization and sale of property covered by the loan and mortgage.

§ 215. Conditions of loans. Except as otherwise provided in section 213(a)(5), each contract of loan with the lessee or any successor or successors to his interest in the tract or with any agricultural, mercantile, or aquacultural cooperative association composed entirely of lessees shall be held subject to the following conditions whether or not stipulated in the contract loan:

(1) At any one time, the outstanding amount of loans made to any lessee, or successor or successors in interest, for the repair, maintenance, purchase, and erection of a dwelling and related permanent improvements shall not exceed $50,000, for the development and operation of a farm, ranch, or aquaculture operation shall not exceed $50,000, except that when loans are made to an agricultural or aquacultural cooperative association for the purposes stated in section 214(a)(4), the loan limit shall be determined by the department on the basis of the proposed operations and the available security of the association, and for the development and operation of a mercantile establishment shall not exceed the loan limit determined by the department on the basis of the proposed operations and the available security of the lessee or of the organization formed and controlled by lessees; provided that upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian

home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall make the payment provided for by section 209(a), the amount of any such payment made to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, shall be considered as part or all, as the case may be, of any such loan to the successor or successors, without limitation as to the above maximum amounts; provided further that in case of the death of a lessee, or cancellation of a lease by the department, or the surrender of a lease by the lessee, the successor or successors to the tract shall assume any outstanding loan or loans thereon, if any, without limitation as to the above maximum amounts but subject to paragraph (3).

(2) The loans shall be repaid in periodic installments, such installments to be monthly, quarterly, semiannual, or annual as may be determined by the department in each case. The term of any loan shall not exceed thirty years. Payments of any sum in addition to the required installments, or payment of the entire amount of the loan, may be made at any time within the term of the loan. All unpaid balances of principal shall bear interest at the rate of two and one-half per cent a year for loans made directly from the Hawaiian home loan fund, or at the rate of two and one-half per cent or higher as established by law for other loans, payable periodically or upon demand by the department, as the department may determine. The payment of any installment due shall be postponed in whole or in part by the department for such reasons as it deems good and sufficient and until such later date as it deems advisable. Such postponed payments shall continue to bear interest on the unpaid principal at the rate established for the loan.

(3) In the case of the death of a lessee the department shall, in any case, permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). In case of the cancellation of a lease by the department or the surrender of a lease by the lessee, the department may, at its option declare all installments upon the loan immediately due and payable, or permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). The department may, in such cases where the successor or successors to the tract assume the contract of loan, waive the payment, wholly or in part, of interest already due and delinquent upon the loan, or postpone the payment of any installment thereon, wholly or in part, until such later dates as it deems advisable. Such postponed payments shall, however, continue to bear interest on the unpaid principal at the rate established for the loan. Further, the department may, if it deems it advisable and for the best interests of the lessees, write off and cancel, wholly or in part, the contract of loan of the deceased lessee, or previous lessee, as the case may be, where such loans are delinquent and deemed uncollectible. Such write off and cancellation shall be made only after an appraisal of all improvements and growing crops or improvements and aquaculture stock, as the case may be, on the tract involved, such appraisal to be made in the

manner and as provided for by section 210.5. In every case, the amount of such appraisal, or any part thereof, shall be considered as part or all, as the case may be, of any loan to such successor or successors, subject to paragraph (1).

(4) No part of the moneys loaned shall be devoted to any purpose other than those for which the loan is made.

(5) The borrower or the successor to his interest shall comply with such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the contract of loan.

(6) The borrower or the successor to his interest shall comply with the conditions enumerated in section 208, and with section 209 of this Act in respect to the lease of any tract.

(7) Whenever the department shall determine that a borrower is delinquent in the payment of any indebtedness to the department, it may require such borrower to execute an assignment to it, not to exceed, however, the amount of the total indebtedness of such borrower, including the indebtedness to others the payment of which has been assured by the department of all moneys due or to become due to such borrower by reason of any agreement or contract, collective or otherwise, to which the borrower is a party. Failure to execute such an assignment when requested by the department shall be sufficient ground for cancellation of the borrower's lease or interest therein.

§ 216. Insurance by borrowers; acceleration of loans; lien and enforcement thereof. (a) The department may require the borrower to insure, in such amount as the department may prescribe, any livestock, aquaculture stock, swine, poultry, fowl, machinery, equipment, dwellings, and permanent improvements purchased or constructed out of any moneys loaned or assured by the department, or, in lieu thereof, the department may directly take out such insurance and add the cost thereof to the amount of principal payable under the loan.

(b) Whenever the department has reason to believe that the borrower has violated any condition enumerated in paragraph (2), (4), (5), or (6) of section 215 of this Act, the department shall give due notice and afford opportunity for a hearing to the borrower or the successor or successors to his interest, as the case demands. If upon such hearing the department finds that the borrower has violated the condition, the department may declare all principal and interest of the loan immediately due and payable notwithstanding any provision in the contract of loan to the contrary.

(c) The department shall have a first lien upon the borrower's or lessee's interest in any lease, growing crops, aquaculture stock, either on his tract or share in any collective contract or program, livestock, swine, poultry, fowl, aquaculture stock, machinery, and equipment purchased with moneys loaned by the department, and in any dwellings or other permanent improvements on any leasehold tract, to the amount of all principal and interest due and unpaid and of all taxes and insurance and improvements paid by the department, and any other indebtedness of the borrower, the payment of which has been assured by the department. Such lien

shall have priority over any other obligation for which the property subject to the lien may be security.

(d) The department may, subject to this Act and procedures established by rule, enforce any lien by declaring the borrower's interest in the property subject to the lien to be forfeited, any lease held by the borrower canceled, and shall thereupon order such leasehold premises vacated and the property subject to the lien surrendered within a reasonable time. The right to the use and occupancy of the Hawaiian home lands contained in such lease shall thereupon revest in the department, and the department may take possession of the premises covered therein and the improvements and growing crops or improvements and aquaculture stock thereon; provided that the department shall pay to the borrower any difference which may be due him after the appraisal provided for in section 209 has been made.

§ 217. [Ejectment, when: loan to new lessee for improvements.] In case the lessee or borrower or the successor to his interest in the tract, as the case may be, fails to comply with any order issued by the department under the provisions of section 210 or 216 of this title, the department may (1) bring action of ejectment or other appropriate proceedings, or (2) invoke the aid of the circuit court of the State for the judicial circuit in which the tract designated in the department's order is situated. Such court may thereupon order the lessee or his successor to comply with the order of the department. Any failure to obey the order of the court may be punished by it as contempt thereof. Any tract forfeited under the provisions of section 210 or 216 of this title may be again leased by the department as authorized by the provisions of section 207 of this title, except that the value, in the opinion of the department, of all improvements made in respect to such tract by the original lessee or any successor to his interest therein shall constitute a loan by the department to the new lessee. Such loan shall be subject to the provisions of this section and sections 215, except paragraph (1), and 216 to the same extent as loans made by the department from the Hawaiian loan fund.

§ 218. [Lessees ineligible under "farm loan act".] [Repealed L 1967]

§ 219. Agricultural and aquacultural experts. The department is authorized to employ agricultural and aquacultural experts as such compensation and in such number as it deems necessary. It shall be the duty of such agricultural and aquacultural experts to instruct and advise the lessee of any tract or the successor to the lessee's interest therein as to the best methods of diversified farming and stock raising and aquaculture operations and such other matters as will tend successfully to accomplish the purposes of this title.

§ 219.1. General assistance. The department is authorized to carry on any activites it deems necessary to assist the lessees in obtaining maximum utilization of the leased lands, including taking any steps necessary to develop these lands for their highest and best use commensurate with the purposes for which the land is being leased as provided for in section 207, and assisting the lessees in all phases of farming, ranching, and aquaculture operations and

the marketing of their agricultural or aquacultural produce and livestock.

§ 220. [Development projects; appropriations by legislature: bonds issued by legislature.] The department is authorized directly to undertake and carry on general water and other development projects in respect to Hawaiian home lands and to undertake other activities having to do with the economic and social welfare of the homesteaders, including the authority to derive revenue from the sale, to others than homesteaders, of water and other products of such projects or activities, or from the enjoyment thereof by others than homesteaders, where such sale of products or enjoyment of projects or activities by others does not interfere with the proper performance of the duties of the department: provided, however, that roads through or over Hawaiian home lands, other than federal-aid highways and roads, shall be maintained by the county or city and county in which said particular road or roads to be maintained are located. The legislature is authorized to appropriate out of the treasury of the State such sums as it deems necessary to augment the Hawaiian home-loan fund, the Hawaiian home-development fund, the Hawaiian home-operating fund, and the Hawaiian home-administration account, and to provide the department with funds sufficient to execute and carry on such projects and activities. The legislature is further authorized to issue bonds to the extent required to yield the amount of any sums so appropriated for the payment of which, if issued for revenue-producing improvements, the department shall provide, as set forth in section 213(d).

To enable the construction of irrigation projects which will service Hawaiian home lands, either exclusively or in conjunction with other lands served by such projects, the department is authorized, with the approval of the governor, to grant to the [board of land and natural resources], or to any other agency of the government of the State or the United States undertaking the construction and operation of such irrigation projects, licenses for rights-of-way for pipelines, tunnels, ditches, flumes, and other water conveying facilities, reservoirs and other storage facilities, and for the development and use of water appurtenant to Hawaiian home lands; to exchange available lands for public lands, as provided in section 204(4) of this title, for sites for reservoirs and subsurface water development wells and shafts; to request any such irrigation agency to organize irrigation projects for Hawaiian home lands and to transfer irrigation facilities constructed by the department to any such irrigation agency; to agree to pay the tolls and assessments made against community pastures for irrigation water supplied to such pastures; and to agree to pay the costs of construction of projects constructed for Hawaiian home lands at the request of the department, in the event the assessments paid by the homesteaders upon lands are not sufficient to pay such costs: Provided, that licenses for rights-of-way for the purposes and in the manner specified in this section may be granted for a term of years longer than is required for amortization of the costs of the project or projects requiring use of such rights-of-way only if authority for such longer grant is approved by an act of the legislature of the State. Such payments shall be made from, and be a charge against the Hawaiian home-operating fund.

§ 221. Water. (a) When used in this section:

(1) The term "water license" means any license issued by the board of land and natural resources granting to any person the right to the use of government-owned water; and

(2) The term "surplus water" means so much of any government-owned water covered by a water license or so much of any privately owned water as is in excess of the quantity required for the use of the licensee or owner, respectively.

(b) All water licenses issued after the passage of this Act shall be deemed subject to the condition, whether or not stipulated in the license, that the licensee shall, upon the demand of the department, grant to it the right to use, free of all charge, any water which the department deems necessary adequately to supply the livestock, aquaculture operations, or domestic needs of individuals upon any tract.

(c) In order adequately to supply livestock, the aquaculture operations, or the domestic needs of individuals upon any tract, the department is authorized (1) to use, free of all charge, government-owned water not covered by any water license or covered by a water license issued after the passage of this Act or covered by a water license issued previous to the passage of this Act but containing a reservation of such water for the benefit of the public, and (2) to contract with any person for the right to use or to acquire, under eminent domain proceedings similar, as near as may be, to the proceedings provided in respect to land by sections 101-10 to 101-34, Hawaii Revised Statutes, the right to use any privately owned surplus water or any government-owned surplus water covered by a water license issued previous to the passage of this Act, but not containing a reservation of such water for the benefit of the public. Any such requirement shall be held to be for a public use and purpose. The department may institute the eminent domain proceedings in its own name.

(d) The department is authorized, for the additional purpose of adequately irrigating any tract, to use, free of all charge, government-owned surplus water tributary to the Waimea river upon the island of Kauai, not covered by a water license or covered by a water license issued after July 9, 1921. Any water license issued after that date and covering any such government-owned water shall be deemed subject to the condition, whether or not stipulated therein, that the licensee shall, upon the demand of the department, grant to it the right to use, free of all charge, any of the surplus water tributary to the Waimea river upon the island of Kauai, which is covered by the license and which the department deems necessary for the additional purpose of adequately irrigating any tract.

Any funds which may be appropriated by Congress as a grant-in-aid for the construction of an irrigation and water utilization system on the island of Molokai designed to serve Hawaiian home lands, and which are not required to be reimbursed to the federal government, shall be deemed to be payment in advance by the department and lessees of the department of charges to be made to them for the construction of such system and shall be credited against such charges when made.

(e) All rights conferred on the department by this section to use, contract for, or acquire the use of water shall be deemed to include the right to use, contract for, or acquire the use of any ditch or pipeline constructed for the distribution and control of such water and necessary to such use by the department.

(f) Water systems in the exclusive control of the department shall remain under its exclusive control; provided that the department may negotiate an agreement to provide for the maintenance of the water system and the billing and collection of user fees. If any provision or the application of that provision is inconsistent with provisions contained in this section, this section shall control.

Water systems include all real and personal property together with all improvements to such systems acquired or constructed by the department for the distribution and control of water for domestic or agricultural use.

§ 222. Administration. (a) The department shall adopt rules and regulations and policies in accordance with the provisions of chapter 91, Hawaii Revised Statutes. The department may make such expenditures as are necessary for the efficient execution of the functions vested in the department [by] this Act. All expenditures of the department, as herein provided out of the Hawaiian home-administration account, the Hawaiian home-development fund, or the Hawaiian home-operating fund, and all monies necessary for loans made by the department, in accordance with the provisions of this Act, from the Hawaiian home-loan fund, shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the commission. The department shall make an annual report to the legislature of the State upon the first day of each regular session thereof and such special reports as the legislature may from time to time require. The chairman and members of the commission shall give bond as required by law. The sureties upon the bond and the conditions therof shall be approved annually by the governor.

(b) When land originally leased by the department is, in turn, subleased by the department's lessee or sublessee, the department shall submit, within ten days of the convening of any regular session, a written report to the legislature which shall cover the sublease transactions occurring in the calendar year prior to the regular session and shall contain the names of the persons involved in the transaction, the size of the area under lease, the purpose of the lease, the land classification of the area under lease, the tax map key number, the lease rental, the reason for approval of the sublease by the department, and the estimated net economic result accruing to the department, lessee and sublessee.

§ 223. [Right of amendment, etc.] The Congress of the United States reserves the right to alter, amend, or repeal the provisions of this title.

§ 224. Sanitation and reclamation expert. The Secretary of the Interior shall designate from his Department someone experienced in sanitation, rehabilitation, and reclamation work to reside in the State and cooperate with the department in carrying out its duties. The salary of such official so designated by the Secretary of the Interior shall be paid by the department while he is carrying on his duties in the State.

§ 225. Investment of funds; disposition. (a) The department shall have the power and authority to invest and reinvest any of the moneys in any of its funds, not otherwise immediately needed for the purposes of the funds, in such bonds and securities as authorized by state law for the investment of state sinking fund moneys.

(b)(1) The department may receive, manage, and invest moneys or other property, real, personal or mixed, or any interest therein, which may be given, bequeathed, or devised, or in any manner received from sources other than the legislature or any federal appropriation, for the purposes of the Act.

(2) All moneys received by or on behalf of the department shall be deposited into the state treasury to be expended according to law and for purposes in accordance with the terms and conditions of the gift. All moneys shall be appropriated for purposes enumerated in such gifts and if no specific purpose is enumerated, shall be appropriated to the Hawaiian home trust fund.

(3) The department is authorized to sell, lease, or in any way manage such real, personal, or mixed property or any interest therein, in the manner and for the purposes enumerated in the gift. If no conditions are enumerated, the gift may be sold, leased, managed, or disposed of and the income or proceeds therefrom shall be deposited into the Hawaiian home trust fund.

(4) The real property or any interest therein received by the department through contributions or grants shall not attain the status of Hawaiian home lands as defined in section 201(a)(5).

(5) The department shall cause to be kept suitable books of account wherein shall be recorded each gift, the essential facts of the management thereof, and the expenditure of income.

(6) Any action to be taken with respect to gifts shall be made in a public meeting where any pertinent information and reasons for any decisions shall be fully disclosed.

§ 226. Qualification for federal programs. The department shall be qualified to participate in any federal program that renders assistance in program areas that the department is mandated by the Act to implement.

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